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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1720/2016**

JAI BHAGWAN & ORS.

..... Petitioners

Through: Ms. Seema Sharma and Ms. Nandita
Talukdarr, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Yeeshu Jain and Ms. Jyoti Tyagi,
Advocates for LAC/L&B.
Ms. Beenashaw N. Soni, ASC with
Mr. Aakash Yadav, Advocate for
DDA.
Mr. Peeyoosh Kalra and Mr. Ashok
Nagrath, Advocates for Intervenor.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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31.01.2019

**W.P.(C) 1720/2016 with CM Appl...../2019 (to be numbered by the
Registry) in W.P.(C) 1720/2016**

1. The prayer in the present petition reads as under:

“It is therefore, respectfully prayed that this Hon'ble court may be pleased to issue a Writ/ order/ direction in the nature of certiorari calling for the records of the acquisition proceedings with respect to the lands comprised in Khasara No.42 min (3-14) ,43 Min (4-130 44 Min 45 Min 46, 39 Min Situated In Village Mandawali Fazalpur Illaqa Shahdara, Delhi acquired vide award No. 2179/69 pronounced on 28/1/1969 and further to pass appropriate writ,

order or directions declaring the acquisition proceedings to have lapsed and have become inoperative under section 24 (2) of the Right to fair compensation and Transparency in land Acquisition Rehabilitation and Resettlement Act of 2013 as neither possessions of the land of the petitioners have, been taken nor compensation with respect to lands have been paid.”

2. According to the narration in the petition, notification under Section 4 of the Land Acquisition Act, 1894 (‘LAA’) was issued on 13th November 1959 followed by declaration under Section 6 LAA on 17th June 1963. The impugned Award No. 2179 was pronounced way back on 28th January 1969 by the Land Acquisition Collector (LAC) in respect of the abovementioned land.

3. According to the Petitioners, they have been in actual, continuous physical possession of the land, continue to do so and “are cultivating the land and their crops are standing”. Photographs of the same have been enclosed with this petition. It is claimed that the land was in cultivatory physical possession of the father of the Petitioners and after his demise on 5th December 1991, the cultivatory possession vests with the Petitioners “who have acquired valuable bhoomidari rights” as provided under Section 85 of the Delhi Land Revenue Act.

4. Thereafter the Petitioner straightaway refers to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (‘the 2013 Act’) which came into force on 1st January 2014. It is stated that since no compensation has been offered or paid by the LAC and possession also remains with the Petitioners, they are

entitled to a declaration of deemed lapsing of land acquisition proceedings under Section 24 (2) of the 2013 Act.

5. CM 24703/2017 was filed by Mahender Singh son of Shri Mam Chand seeking to be impleaded as an intervenor. In the said application, it was pointed out that according to the Khasra Girdawaris for the years 1968-1970-71 of Mandawali Fazalpur, Khasra Nos. 42, 43, 44 and 45, the father of the intervenor Shri. Mam Chand along with his brother Shri Kishan Chand, both sons of Shri Nathva are the recorded tenure holders with the authorities. It is further stated that after the Award dated 18th November 1968, the name of his father and his brother were substituted by the name of the Government “though in reality the possession of the said land continues to remain with the Petitioner/intervenor and his brothers.”

6. It is further pointed out in the said application CM 24703/2017 that the present Petitioners concealed the fact that they had filed W.P. (C) 4807/2016 claiming to be in cultivatory possession of the land and praying that the entries in the Khasra registered in Column No.21 of the Khasra Girdawari be made in their name. That writ petition was resisted by the Respondent (LAC) who pointed out that “the land in question has become urbanized and in thereof no such entries could be made.” In view of the said stand, W.P.(C) 4807/2016 was disposed of on 29th July 2016 by this Court noting that the Petitioner was withdrawing the petition but that the petition be treated as a representation of the department which would dispose of it in three months. It is accordingly submitted that the Petitioners do not have any right, title or interest in the land in question.

7. A separate CM 29890/2017 was filed on behalf of Prem Singh s/o of Shri Kishan Lal seeking to be impleaded on the same basis Both these applications were allowed on 26th October 2018.

8. A short counter affidavit was filed by the DDA on 2nd February 2018 wherein inter alia, it is pointed out, that admittedly the Petitioners are not the recorded owners of the land in question and therefore have no *locus standi* to file the petition. It is pointed out that possession was taken over by the LAC/L&B Department and handed over to the DDA on 3rd December 1968 itself and 26th June 1971 itself. Some portion of the land has been handed over to the MCD for construction of a pumping station and some to the Northern Railway on 9th August 1983 and 18th January 1993 respectively.

9. A separate counter affidavit has been filed by the LAC (East) in which in paras 4 to 6, it is stated as under:

“4. That the present writ petition is liable to be dismissed as the petitioners have been claiming to be in cultivator possession through their father who died on 5.12.91 and acquired bhumidari rights but the petitioners have not annexed any document showing that the bhumidari rights were conferred on the late father of the petitioners.

5. That the present writ petition is liable to be dismissed as the physical possession of the subject land was duly taken on 3.12.1968 on the spot and handed over to the DDA by preparing possession proceeding on the spot. The compensation for the said khasra numbers was also paid to the respective recorded owners as per table -A.

6. That it is submitted that for the purpose of planned development of Delhi, the answering respondent issued a Notification u/s 4 of the Land Acquisition Act, 1894 on 13.11.1959 which was followed by Notification u/s 6 of the said Act dated 10.3.1966 for the acquisition of the lands falling in the khasra numbers under reference in village Mandawali Fazalpur, Delhi. That an Award No. 2179 dated 18.11.1968 was also passed and the actual vacant physical part possession of the subject land was also taken vide possession proceedings dated 3.12.1968.”

10. Till date no rejoinder has been filed by the Petitioners to either the counter affidavits of the DDA or the LAC or for that matter even to the applications filed by the interveners. Clearly, therefore, the assertions about the Petitioners continuing to remain in cultivatory possession for the lands in question and not receiving compensation raise disputed questions of facts which cannot possibly be examined in the present petition.

11. Learned counsel for the Petitioners states that they had filed an application under Order 6 Rule 17 for amending the writ petition. The said application has been perused by the Court. What it seeks to add are paras 3A to 3E seeking to explain what transpired between the death of the father of the Petitioners and the date of alleged threat of dispossession in 2015. All that is sought to be said is that the Petitioners were not aware that the land in question was subject to any Award and only when they were threatened by the Respondents to be dispossessed in the year 2015, they came to know that the land in question had been acquired by the impugned Award No. 2179.

12. The above explanation is not convincing. The fact remains that for nearly five decades, no steps were taken to question the land acquisition

proceedings. The Petitioners have no explanation to offer for the inordinate delay in approaching the Court for the relief. The petition is also therefore clearly barred by laches in terms of the decision of the Supreme Court in ***Mahavir v. Union of India (2018) 3 SCC 588***, wherein it was held as under:

“23. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

24. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.”

13. The above decision has been reaffirmed in the judgment of the three Judge Bench in ***Indore Development Authority v. Shailendra (2018) 3 SCC 412*** where it was held as under:

“128. In our considered opinion section 24 cannot be used to revive the dead or stale claims and the matters, which have been contested up to this Court or even in the High Court having lost the cases or where reference has been sought for enhancement of the compensation. Compensation obtained and still it is urged that physical possession has not been taken from them, such claims cannot

be entertained under the guise of section 24(2). We have come across the cases in which findings have been recorded that by which of drawing a Panchnama, possession has been taken, now again under Section 24(2) it is asserted again that physical possession is still with them. Such claims cannot be entertained in view of the previous decisions in which such plea ought to have been raised and such decisions would operate as *res judicata* or constructive *res judicata*. As either the plea raised is negatived or such plea ought to have been raised or was not raised in the previous round of litigation. Section 24 of the Act of 2013 does not supersede or annul the court's decision and the provisions cannot be misused to reassert such claims once over again. Once Panchnama has been drawn and by way of drawing the Panchnama physical possession has been taken, the case cannot be reopened under the guise of section 24 of Act of 2013.

129. Section 24 is not intended to come to the aid of those who first deliberately refuse to accept the compensation, and then indulge in ill-advised litigation, and often ill-motivated dilatory tactics, for decades together. On the contrary, the section is intended to help those who have not been offered or paid the compensation despite it being the legal obligation of the acquiring body so to do, and/or who have been illegally deprived of their possession for five years or more; in both the scenarios, fault/cause not being attributable to the landowners/claimants.

130. We are of the view that stale or dead claims cannot be the subject-matter of judicial probing under section 24 of the Act of 2013. The provisions of section 24 do not invalidate those judgment/orders of the courts where under rights/claims have been lost/negatived, neither do they revive those rights which have come barred, either due to inaction or otherwise by operation of law. Fraudulent and stale claims are not at all to be raised under the guise of section 24. Misuse of provisions of section 24(2) cannot be permitted. Protection by the courts in cases of such blatant misuse of the provisions of law could never have been the intention behind enacting the provisions of section 24 (2) of the 2013 Act; and, by the decision laid down in *Pune Municipal Corporation (supra)*, and this Court never, even for a moment, intended that such cases would be received or entertained by

the courts.”

14. The above observations have been followed by this Court in several orders including the order dated 10th January, 2019 in WP(C) No. 4528/2015 (***Mool Chand v. Union of India***) and similar petitions have been dismissed on the ground of laches.

15. For the aforementioned reasons, the petition fails both on the ground of laches as well as merits and is dismissed as such. The interim order dated 29th February 2016 as confirmed on 26th October 2018 is hereby vacated.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 31, 2019

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